IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA,
In and for the County of Ormsby.

Marion W. Bulkley, Plaintiff
vs.
Joseph W. Bulkley, Defendant

Action brought in the District Court of the First Judicial District of the State of Nevada, Ormsby County, and the complaint filed in the said county, in the office of the Clerk of said District Court on the 2d day of December, A. D. 1905.

THE STATE OF NEVADA SENDS GREETING TO
JOSEPH W. BULKLEY
Defendant.

You are hereby required to appear in an action brought against you by the above named Plaintiff, in the District Court of the first Judicial District of the State of Nevada, Ormsby County, and answer complaint filed therein within ten days (exclusive of the day of service) after the service on you of this Summons is served in said county, or if served out of said County, but within the District, twenty days, in all other cases forty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to obtain the judgment and decree of this court that the bonds of matrimony heretofore and now existing and uniting you and said plaintiff to be forever annulled and dissolved upon the ground that at divers times and places since said marriage you have committed adultry with one Kate Cottrell, and particularly that from about the 9th day of June 1900 to and including, the 13th day of June, 1900, at the Charing Cross Hotel in the city of London, England, you lived and cohabited with said Kate Cottrell.

All of which more fully appears by complaint as filed herein to which you are hereby referred.

And you are hereby notified that if you fail to answer the Complaint, the said Plaintiff will apply to the Court for the relief herein demanded.

GIVEN under my hand and Seal of the District Court of the First Judicial District of the State of Nevada Ormsby County, this 2d day of December, in the year of our Lord one thousand nine hundred and Five.

H. B. VAN ETTEN, Clerk.
(SEAL).
Geo. W. Keith,
Attorney for Plaintiff.

Notice of Application for Permission to Appropriate the Public Waters of the State of Nevada.

Notice is hereby given that on the 12th day of Sept., 1905, in accordance with Section 23, Chapter XLVI, of the Statutes of 1905, one Philip V. Mighels and Frank L. Wildes of Carson, County of Ormsby and State of Nevada, made application to the State Engineer of Nevada for permission to appropriate the public waters of the State of Nevada. Such application to be made from Ash Canyon creek at points in N E ¼ of S W ¼ of section 10 T 15 N R 19 E by means of a dam and headgate and five cubic feet per second is to be conveyed to points in N E ¼ of S W ¼ of section 11, T 15 N, R 19 E., by means of a flume and pipe and there used to generate electrical power. The construction of said works shall begin before June 1, 1906, and shall be completed on or before June 1, 1907. The water shall be actually applied to a beneficial use on or before June 1, 1908.

Signed:
HENRY THURTELL,
State Engineer.

SCHOOL APPORTIONMENT.
STATE OF NEVADA,

Department of Education,
Office of Superintendent of Public Instruction,.

Carson City, Nevada, July 11, 1505
To the School Officers of Nevada:

Folowing is a statement of the second semi-annual apportionmen t of School Moneys for 1905, on the basis of $6.990202 per census child:

Counties	children	Amt.
Churchill	135	$ 943 68
Douglass	317	2,215 90
Elko	1,120	7,829 02
Esmeralda	217	1,516 87
Eureka	389	2,719 20
Humboldt	741	
Lander	318	
Lincoln	706	
Lyon	400	
Nye	382	
Ormsby		
Storey	989	
Washoe	2,412	16,860 36
White Pine	525	3,669 85
Total	9,430	$65,917 61

IN THE SUPREME COURT OF THE STATE OF NEVADA.

William J. Brandon,
Plaintiff and Appellant,
vs.
N. H. West, as Administrator of the estate of B. G. Clow, deceased, Grace Clow, et al, Defendants and Respondents.

Messrs Mack and Farrington, Attorneys for Appellant.
Messrs. Cheney and Massey, Attorneys for Respondent.

DECISION

This action was brought against the defendant, West, as administrator, and the other defendants as heirs, of the estate of B. G. Clow, deceased, to compel the execution of a deed to plaintiff for a triangular piece of land marked with three iron pins and less than one acre in extent as described in the complaint. The uncontradicted testimony of several witnesses introduced by the plaintiff shows that Clow, in the year 1901, and a considerable time before his death, sold to plaintiff a sand hill or sand pit which is identical with or embraced in the boundaries of the parcel of land mentioned, went upon the premises, marked and pointed out the boundaries to the plaintiff, put him in possession and accepted a cow in payment. Thereafter plaintiff hauled and sold sand from the pit exclusively and his right to the same were expressly acknowledged upon different occasions by Clow, who directed to plaintiff, persons applying for sand. No evidence was offered by the defendants.

The court was in doubt as to whether the proofs showed a sale of the land or at the request of the plaintiff found that "he purchased the sand situated upon and in the sand hill described in plaintiff's complaint and the exclusive right to take sand therefrom", that Clow received and retained possession of the cow and that prior to and long after his death plaintiff was in possession of the property and taking sand.

From a judgment in favor of defendants for their costs and an order overruling a motion for a new trial, this appeal is taken.

The burden being upon the plaintiff to establish clearly an executed sale and there being a doubt as to whether Clow intended to sell the land in fee, or only the sand, leaving the land for him or his estate when stripped of it, the court properly refused to enforce a conveyance of the freehold to plaintiff, but it having been plainly indicated by the evidence and the court having found that there was an executed sale of the sand by Clow to the plaintiff, the latter was entitled to relief to that extent. In principle the plaintiff has an interest in the land like the right to remove stone or cut timber or maintain a roadway or other easement, or like a lease or term for life or years, and although less than freehold the plaintiff, after being placed in possession and making payment, became entitled upon demand, to a conveyance to the extent of his purchase, which could be recorded and which would give notice of his ownership, from Clow who held that part of the title for him as a trustee, the same as Clow would have retained the whole title if the sale had been of the freehold.

This legal title having passed to its successors by operation of law, it is incumbent upon them to convey it to plaintiff.

Schroder v. Gemeinder, 10 Nev. 367
Lake v. Lewis, 16 Nev. 94.
Powell v. Campbell, 20 Nev. 233.
I Tiffany Modern Law of Real Prop. Sec. 16.
Thompson v. Smith, 63 N. Y. 303 and cases there cited.
Kerr v. Day, 14 Pa. St. 112.
53 Am. Dec. 526 and annotation.
Felch v. Hooper, 119 Mass. 52.
Masterson v. Pullen, 62 Ala. 146.
Wehn v. Fall, 53 Neb. 547.
Swepson v. Rouse, 65 N. C. 34.
6 Am. R. 735.
Adams v. Harris, 47 Miss. 144.
Carson v. Mulvany, 49 Pa. St. 88.
Morgan v. Morgan, 2 Wheaton (15 U. S.) 302.
Massie v. Watts, 6 Cranch, 148.
Newton v. Bronson, 67 Am. Dec. 89.
W. U. v. F. C. C. Co. 137; Fed. p. 435.
5 Pom. Eq. (3 ed.) Sec. 12 to 16 and cases cited Vol. 1 id. 367

If the proofs had indicated the sale of sand on land different from that described in the complaint there would have been a fatal variance, but when they establish that the plaintiff is entitled to an interest in, or a part of the estate, quantity or amount of land, money or personal property claimed under the allegations and demand in the complaint, he should be given under such circumstances as exist here, relief to that extent and not be forced to further litigation.

That the plaintiff may recover less than the whole of that which he demands without being relegated to another action is according to usual practice, and any other rule would tend to multiplicity of suits and occasion unnecessary delays and hardships.

In Brogan v. Daughdrill, 51 Ala. 316, the bill averred a contract for the sale of more than four hundred acres, and the decree of the chancellor enforcing it as to eighty acres only was sustained, and it was said that it is a general rule of law and in equity that a plaintiff may recover a part only of what he claims.

In Drury v. Conner, 6 Harris and Johns 488 cited in that opinion, the plaintiff claimed the conveyance of the whole of a piece of land, but the proofs entitled him to an undivided one-fourth only, which was decreed to him.

In Vicksburg R. R. Co., v. Ragsdale, 54, Miss. 215; "We know of no rule of equity which denies relief to a party altogether because he has made a false claim as to a part of it. In so far as he has shown title to relief to that extent should he be redressed."

The sand is a part of the land for which plaintiff seeks a deed in his complaint, the same as ore, marble or stone before removal is a part of the reality.

State v. Berryman, 2 Nev. 268.
Kingsley v. Holbrook, 45 N. H. 319.
Stevenson v. Bacharach, 170 Ill. 256.
State v. Poltmeyer, 33 Ind. 402.
Carry v. Daniels, 8 Metc. 480.
Lux. v. Haggin, 69 Cal. 255.
2 Blackstone Com. 18.
Lime Rock R. R. Co. v. Farnsworth, 86 Me. 130.

The defendants were aware that the plaintiff demanded a conveyance of the whole of the land, and they could have avoided costs by tendering a deed for that part of it comprising the sand, and the right of its removal, in the same way that immunity from costs may be secured by an offer to allow judgment for a less sum or estate, or for a smaller quantity of land or personal property than that demanded in the complaint.

In Schrader v. Gemeinder, Justice Hawley, speaking for this court said: "We are satisfied that the objection urged upon the ground that the premises described in the deed were not the same as described in the lease is not well taken for the reason that no such objection was made at the time the deed was presented. If that was the only objection respondent ought to have so stated at the time of the tender. But in any view this objection could only be urged upon a question of costs and not to defeat appellant's rights. Courts of equity ought to determine the rights of the parties according to the broad principles of justice and fair dealing and not by the technical and refined distinctions of the law."

This judgment and order are reversed, and the district court is directed to decree the execution on the part of the defendants of the proper deed conveying to the plaintiff the sand on the premises described in this complaint and the exclusive right to remove the same to which he is entitled as shown by the uncontradicted evidence and findings with his costs, if the proper memorandum thereof is filed within two days after the entry of the decree under the usual practice and Sec. 3581. Pursuant to the written of respondents the items of expense in the lower court are stricken out of the cost billed here, but the reporters' fees of $34.00 for transcribing notes or the records on appeal and the cost of typewriting briefs are allowed to stand under Rule VI, and the decision in the recent case of Candler v. Ditch Co.

Talbot, J.

I concur:
Norcross, J.

Finding myself unable to concur in the prevailing opinion, I deem it proper to make a brief statement of my view of the case as it appears from the transcript filed in this court.

This is a suit for a specific performance of an alleged contract to convey land.

The contract was in the complaint of plaintiff alleged to have been made by plaintiff with one B. G. Clow in the lifetime of said Clow; and the suit is against N. H. West, as administrator of the estate of said Clow, and also against others named in said complaint as claiming under said Clow.

The case was tried without a jury; and the trial court gave judgment against plaintiff. The plaintiff appeals from said judgment and also from the order of the court denying his motion for a new trial.

The question before us on the appeal is: Does the evidence sustain the judgment and order? I think it does.

The plaintiff sued for land, specifically describing it, alleging a contract with defendants' intestate to convey the same; but his evidence—the defendant not having put in any other than to cross examine plaintiff's witnesses—shows that he had no contract to convey land, but merely the sand on the premises described. I deem it unnecessary to quote or minutely state the evidence here. It is deemed sufficient that the general statement be made that no one of plaintiff's witnesses gives evidence of a buying or selling of land or a contract for buying or selling land. All the evidence is as to buying and selling the "sand pit" or the "sand hill" on certain premises described in said evidence; or contracting to sell such sand pit or sand hill.

Under such state of facts this court would not be justified in disturbing the finding of fact made by the Trial Court that there was no contract for buying, selling or conveying land; and without such contract there was nothing of which the Court could decree specific performance.

The court, however, did find as a fact that there was a contract between plaintiff and defendants' intestate to sell to plaintiff the sand on a certain piece of land described in plaintiff's complaint; and on this finding appellant claims that it was error in the court not to give plaintiff judgment for this sand and for plaintiff's cost of suit.

Under the pleadings and evidence in the case I think the court could not have properly so adjudged. There was no allegation in the complaint of a denial on the part of the defendants or any one of them of this right of plaintiff to the sand; or any allegation of refusal by the defendants or any one of them to permit plaintiff to take the sand in accordance with the contract as stated in said finding. It is true the court made a finding of such contract; but it made no finding of any breach of said contract. So far as anything appears in said finding in concerned the defendants may have always permitted plaintiff to take sand in accordance with the contract found to have been made with plaintiff by defendants' intestate. Under such circumstances the Court could not have adjudged against the defendants for either the sand or the costs of the suit, because plaintiff had failed to prove defendants to have been in default.

Should defendants hereafter refuse to permit plaintiff to take sand in accordance with the contract as stated in the said finding, it may be that plaintiff would have his action to enforce said contract; for then it may be that he could allege not only a contract to take the sand but also breach thereof by defendants. But as the case now stands here there is no breach of such contract either alleged in the complaint or proved by the evidence.

Therefore finding no error in reference to either the judgment or the order appealed from, I think said judgment and the said order should be affirmed.

Fitzgerald, C. J.

Filed Dec. 28th, 1905.

ORDINANCE NO. 112.

On Ordinance for the Licensing of Games and Gambling Devices in Carson City.

The Board of Trustees of Carson City do ordain:

Section 1. Each and every person, firm, company, corporation, or association within the limits of Carson City, who shall carry on as agent, manager, owner or proprietor, any game of faro, roulette, rondo, keno, or any other game not prohibited by the statutes of the State of Nevada, or who shall carry on or operate any nickle-in-the-slot-machine, or who shall carry on or conduct any banking game played with cards, dice or other device, whether the same be played with money, checks, credit or any other valuable thing or representative of value, shall pay for and obtain a city license to carry on such game, and shall pay or each license twenty-five dollars ($25.00) per month provided that when more than one of said games are carried on in the same room or apartment, whether by the same or different owners, each game so carried on shall be separately licensed: and provided further, that the license imposed by this Ordinance is for the revenue only, and not for the purpose of prohibition, suppression or regulation.

Section 2. The provisions of this Ordinance shall apply to all time on and after October 1, 1905.

Section 3. Ordinance Number 59 and all other ordinances or parts of Ordinances in so far as they conflict with the provisions of this Ordinance are herby repealed.

President of the Board of City Trustees of Carson City, Nevada.

Attest:
H. B. Van Etten, Clerk.

OFFICIAL COUNT OF STATE FUNDS.

STATE OF NEVADA.

County of Ormsby, s. s.

James G. Sweeney being duly sworn say they are members of the Board of Examiners of the State of Nev., that on the 29th day of Nov '05 they, (after having ascertained from the books of the State Controller the amount of money that should be in the Treasury) made an official examination and count of the money and vouchers for money in the State Treasury of Nevada and found the same correct as follows:

Coin	$151,107 29
Paid coin vouchers not returned to Controller	16,835 71
Total	167,945 00

State School Fund Securities.

Irredeemable Nevada State School bond	380,000 00
Mass. State 3 per cent bonds	537,000 00
Nevada State Bonds	253,700 00
Mass. State 3½ per cent bonds	312,000 00
United States Bonds	215,000 00
Total	$1,866,643 90

W. G. Douglass
James G. Sweeney

Subscribed and sworn before me this 29th day of November, A. D. 1905.

J. Doane.
Notary Public, Ormsvy County, Nev.

ANNUAL STATEMENT

Of The State Life Insurance Company
Indianapolis, Ind.

Capital (paid up)	none
Assets (admitted)	3,160,083 31
Liabilities, exclusive of capital and net surplus	2,615,497 63
Income	
Premiums	1,046,907 77
Other sources	197,125 01
Total income, 1904	1,224,032 78
Expenditures	
Losses	300,902 69
Dividends	65,240 11
Other expenditures	1,050,102 76
Total expenditures, 1904	1,416,245 56
Business, 1904	
Risks written	23,276,143 00
Premiums thereon	805,648 06
Losses incured	316,885 00
Nevada Business.	
Risks written	10,000 00
Premiums received	2,852 43
Losses paid	5,000 00

W. S. Wynn Secretary.

Large fresh Eastern oysters in bulk six horses. House, barn and five lots at Davey & Maishs'

Quarterly Report.

OFFICE COUNTY AUDITOR
Ormsby County, Nevada.

To the Honorable, the Board of County Commissioners, Gentlemen:

In compliance with the law, I herewith submit my quarterly report showing receipts and disbursements of Ormsby County, during the quarter ending Dec. 30, 1905.

Receipts.

Balane in County Treasury at end of last quarter	$40023 36¾
County licenses	701 05
Gaming licenses	1057 50
Liquor licenses	310 20
Fee of Co. officers	531 40
Rent of county bldg	250 00
Poll taxes	620 40
1st. Instalment taxes	14924 21¾
Special school tax	1710 90¼
Slot machine license	282 00
Cigarette license	42 30
Semi-Annual Set. State Treas	531 78
Delinquent taxes	23 80½
Sale of horse	10 00
Sale of pump	13 00
Keep of W. Bowen	45 00
Total	61,077 36¾

Disbursements.

State fund	6692 82½
General fund	2732 32
Salary fund	2390 00
Agl Assn. Bond Fund, Series A, $100.00	250 00
Agl. Assn. Bond Fund, Series B $100.00	400 00
Co. School Fund, Dist. 1	388 95
Co. School fund, Dist. 2	151 20
Co. School fund Dist. 3	30 70
Co School Fund Dist. 4	24 60
State School fund, Dist. 1	2605 00
State school fund, Dist 2	160 00
State School fund, dist.3	120 00
State School fund, Dist 4	165 00
Special building	5850 00
School library, No. 2	86 00
Total	21,968 59½

Recapitulation.

Cash in Treasury October 1905	40023 36¾
Receipts from Oct. 1st to Dec 30, 1905	21054 00½
Disbursements from Oct. 1st to Dec 30, 1905	21968 59½
Balance cash in County Treas. January 1, 1906	39108 77¾

Respectfully submitted,
H. DIETERICH,
County Auditor.

Recapitulation

State fund	103 86
General fund	6017 03½
Salary fund	2725 78
Co. School fund	3248 71
Co. School Dist. 1, fund	7638 22½
Co. School Dist. 2, fund	139 64
Co. School Dist. 3, fund	190 26½
Co. School Dist. 3, fund	425 85
State School Dist. 1, fund	1608 06
State School Dist. 2, fund	77 51
State School Dist. 3, fund	371 39
State School Dist. 3, fund	371 39
State School Dist 4, fund	19 22
Agl. Assn. Fund A	680 82½
Agl. Assn Fund, B	86 86½
Agl. Assn Fund Special	1918 94
Co. School Dist. fund - special	13735 90¾
Co. School Dist. fund 1, library	108 10
Co School Dist. fund 3, library	6 50
Co. School Dist fund 4, library	6 10
Total	39108 77¾

Respectfuly submitted
H. B. VAN ETTEN
County Treasurer

Ho. For the West..

Tell your friends that the colonist rates are going into effect March 1st, 1905 and expire May 15, 1905. The rate from Chicago, Ill, $31.00, St. Louis Mo., New Orleans, La., $30 00, Council Bluffs Ia., Sioux City, Ia., Omaha, Neb., Kansas City, Mo., Mineola, Texas and Houston Texas, $25.00. Rates apply to Main Line points in California and Nevada.

For Sale.

Two quartz wagons, one wood and one low wheel wagon, also harness for six horses. House, barn and five lots Apply at Adam Bay, Silver City, Nev.